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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,954	12/08/2003	Francois Cottard	06028.0035-00	9017

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/728,954	COTTARD ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 14, 15 and 23-102 is/are rejected.
- 7) ☒ Claim(s) 5-7, 11-13 and 16-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/12/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-102 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 25-44 and 60-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US 2001/0023515 A1).

Cottard et al. (US' 515 A1) teaches a composition for dyeing hair comprising oxidation dyes (see page 1, paragraph, 0013), anionic polymers comprising at least one fatty chain (associative polymers) as claimed in claims 1-3 and 25-44 (see page 2, paragraphs, 0040, 0041, 0042 and pages 3, 4 and 5), cationic polymers comprising at least one fatty chain as claimed in claims 48- and an amino organomodified silicone compounds (aminosilicone) (see page 17, paragraph, 0337), wherein the composition further, comprises oxidation bases such as para-phenylenediamines, double bases, para-aminophenols and heterocyclic bases in the claimed amounts as claimed in claims 61-69 (see pages 6-8, paragraphs, 0108-0155), couplers such as meta-phenylenediamines in the claimed amounts as claimed in claims 70-72 (see page 8, paragraphs, 0156-0158), acid addition salts such as hydrochlorides and sulfates as claimed in claims 73-74 (see page 8, paragraph, 0159), direct dyes as claimed in claim 75 (see page 8, paragraph, 0160), amphoteric polymers in the claimed amounts as claimed in claims 76-82 (see page 12, paragraphs, 0237-0240), surfactants in the claimed amounts as claimed in claims 83-86

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(see page 16, paragraph, 0317 and page 17, paragraph, 0331), cellulose thickener in the claimed amount as claimed in claims 87-89 (see page 17, paragraphs 0332-0333), reducing agent in the claimed amount as claimed in claim 90 (see page 17, paragraph, 0338) and oxidizing agents such as aqueous hydrogen peroxide as claimed in claims 91-94 (see page 18, paragraph, 0341) and wherein the composition has a pH in the claimed range as claimed in claim 95 (see page 18, paragraph, 0343). Cottard et al. (US' 515 A1) also teaches a multi-compartment kit and process for dyeing keratin fibers similar to those claimed in claims 96-102 (see page 18, paragraphs, 0349-0359 and page 23, paragraphs, 78-83).

The instant claims differ from the reference by reciting the weight ratio between aminosilicone to associative polymer to be equal or greater than 1.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition having the claimed weight ratio between aminosilicone compounds and associative polymers because the reference clearly teaches and disclose a composition comprising an effective quantity of organommodified silicone (aminosilicone) (see page 17, paragraph, 0337) and associative polymers such as cationic polymers in the claimed amounts (see page 12, paragraph, 0240), and, thus, the skilled person in the art would be modified to optimize the ratio between these dyeing ingredients in the composition in order to get the maximum effective amounts and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Further, applicants have not shown on record the criticality of the claimed ratio in the claimed composition.

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3. Claims 4, 8-10, 14-15 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US 2001/0023515 A1) in view of Legrand et al. (US 2003/0140429 A1).

The disclosure of Cottard et al. (US' 515 A1) as described above, does not teach or disclose aminosilicone polymers chosen from aminosilicones of the claimed formulae (I), (II) and (III) as claimed.

However, Cottard et al. (US' 515 A1) suggests the use of organomodified silicone compounds as one of the agents that are already known for oxidation coloration (see page 17, paragraph, 0337).

Legrand et al. (US' 429 A1) in analogous art of hair dyeing formulation, teaches a composition comprising aminosilicone polymers having a formula (I), in which at least one of the radicals R1 to R3 is an alkoxy radical as claimed in claims 4, 8-10 and 14-15 (see page 2, formula (I) and paragraphs, 0023-0028) and wherein the aminosilicone polymers are presented in percentage amounts that overlapped with the claimed percentage amounts as claimed in claims 23-24 (see page 3, paragraph 0053).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard et al. (US' 515 A1) by incorporating the aminosilicone polymers as taught by Legrand et al. (US' 429 A1) to make such a composition with a reasonable expectation of success. Such a modification would be obvious because Cottard et al. as a primary reference suggests the use of modified silicone polymers in the dyeing composition. Legrand et al. (US' 429 A1) as a secondary reference clearly teaches and discloses the claimed aminosilicone polymers, and, thus,

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a person of the ordinary skill in the art would be motivated to incorporate the aminosilicone polymers as taught by Legrand et al. in the composition of Cottard et al. with a reasonable expectation of success for improving the performance of the dyeing composition and the condition of the fibers as well, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

4. Claims 45-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US 2001/0023515 A1) in view of Laurent et al. (US 2002/0046431 A1).

The disclosure of Cottard et al. (US' 515 A1) as described above, does not teach or disclose cationic associative polyurethanes polymers of the claimed formulae (IA), (VII), (VIII), (X) and (IX) as claimed.

However, Cottard et al. (US' 515 A1) suggests the use of cationic substantive polymers of homo-and-co-polymers derived from at least one monomer chosen from acrylic ester, methacrylic esters and amides in the oxidation coloration (see pages 8-9, paragraph, 0169).

Laurent et al. (US' 431 A1) in analogous art of hair dyeing formulation, teaches a composition comprising cationic polyurethane of a formula (Ia), which is similar to the claimed formula (IA) as claimed in claims 45-49 and 58-59 (see page 3, formula (Ia), amphoteric polymer comprises monomers chosen from formulae (Ib) and (IIb) which are similar to the monomers of the claimed formulae (VII) and (VIII) as claimed in claim 50 (see page 6, formulae (Ib) and (IIb)), wherein the monomers are chosen from dimethylaminopropyl-methacrylamide as claimed in claim 51 (see page 7, paragraph, 0191), acrylamidopropyltrimethylammonium chloride as claimed in claim 52 (see page 18, paragraph, 0402), acrylic acid and alkyl acrylates as claimed in claims 53-55 (see page 8, paragraph, 0207) and wherein the cationic polymers are

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presented in the amounts of 0.01 to 3% by weight wherein the range falls within the claimed ranges as claimed in claims 56-57 (see page 9, paragraph 0220).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard et al. (US' 515 A1) by incorporating the cationic polyurethane polymers as taught by Laurent et al. (US' 431 A1) to make such a composition with a reasonable expectation of success. Such a modification would be obvious because Cottard et al. as a primary reference suggests the use of cationic substantive polymers in the dyeing composition. Laurent et al. (US' 431 A1) as a secondary reference clearly teaches and discloses the claimed species of cationic polyurethane polymers, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the cationic polyurethane polymers as taught by Laurent et al. in the composition of Cottard et al. with a reasonable expectation of success for improving the performance of the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Allowable Subject Matter

5. Claims 5-7, 11-13 and 16-22 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record do not teach or disclose the limitations of the claims.

The Examiner advises applicants to cancel the claimed formula (I) and to incorporate the claimed formula (II) and/or (III) in all independent claims.

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Conclusion

The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

October 23, 2005